IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 30 OF 2006.

Dadasaheb Dhondiba Dhaygude & ors. ... Appellants.

Versus.

Genba Baba Raut & others. ... Respondents.

Shri Dilip Bodke for the Appellant.

Shri Vishwanath Talkute for the Respondents Nos.1 to 3.

CORAM : ABHAY S.OKA, J.

DATED : 29th MARCH, 2006.

P.C.:

1. Heard Shri Bodke appearing for the Appellants, who are obstructionists. Shri Bodke submitted that an application was made by the Appellants in the Executing Court raising objection to the execution of the decree and the said application has been rejected by the Executing Court without permitting the Appellants to lead evidence. He submitted that in view of the settled position of law, on the basis of the application made by the Appellants, the parties ought to have been permitted to lead evidence and all questions arising between the parties ought to have been decided.

2. Admittedly the Appellants have purchased the suit property from the Judgment-debtor (original Defendants Nos.5 to 7) after decree was passed by the trial Court. This being an admitted position, in view of sub-rule (2) of Rule 98 of Order 21 of the Code of Civil Procedure, 1908, the obstruction of the Appellants

will have to be removed. The Appellant are admittedly claiming through the Judgment debtors. In view of the admitted position, the trial Court has rejected the application and the said order has been confirmed in Appeal.

3. There is no error in the view taken by the Courts below. Second Appeal is dismissed.

Judge.